

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32(2) (b)
Description of case

Appeal from Order No. 470 of 2004

Date of decision: 31st July, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting~~

Date 31.7.2006

Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 470 of 2004

United India Insurance Company Ltd.,
Through its Divisional Manager,
Divisional Office, Nainital Road, Haldwani,
District Nainital. Appellant

Versus

1. Smt. Neema Bhandari,
W/o Late Sri Laxman Singh Bhandari,
R/o Village Achouli, Vikas Khand-Bin,
District Pithoragarh.
2. Project Manager,
Dhauli Ganga, H.E. Project,
Dharchula through NHPC,
Village Chirdila, Post & Tehsil Dharchula,
District Pithoragarh. Respondents

Mr. D.S. Patni and Mr. Anil Dabral, Advocates for the appellant.
Mr. Gopal Narain and Mr. L.K Verma, Advocates for respondent No. 1.

JUDGMENT

**Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.**

RAJEEV GUPTA, C.J. (Oral)

This is insurer's appeal under Section 30 of the Workmen's Compensation Act, 1923 against the Award dated 08.10.2004 passed by Commissioner for Workmen Compensation / Assistant Labour Commissioner, Haldwani, district Nainital in Case No. WCA 63 of 2002, whereby the appellant – Insurance Company was directed to pay a sum of Rs. 5,45,140/- (Rupees Five Lakhs Fourty Five Thousand One Hundred and Fourty only) as compensation and interest to the claimant.

2. First respondent Smt. Neema Bhandari filed an application before the Commissioner for Workmen Compensation claiming compensation for the death of her husband Laxman Singh Bhandari, who died during the course of his employment with second

respondent on 08.07.2002, when he suffered heart attack while boarding a bus at Bus Station Pithoragarh for going to his work place, Chirdila.

3. The employer of deceased Laxman Singh Bhandari and the appellant – Insurance Company contested the claim on the plea that the death of Laxman Singh Bhandari did not occur during the course of his employment and as such, the claimant was not entitled to any compensation under the Workmen's Compensation Act.

4. The Commissioner for Workmen Compensation, on the evidence led by the parties, found that Laxman Singh Bhandari suffered heart attack while boarding bus at Bus Station Pithoragarh for going to his work place Chirdila. Following the decision of the Karnataka High Court in the case of Assistant Executive Vs. Santwa & another (MFA 4428/1997), it was held that the death of Laxman Singh Bhandari was during the course of his employment. Considering the income of the deceased and his age, the Commissioner assessed the compensation at Rs. 3,68,340/-. A further sum of Rs. 1,76,800/- was awarded as interest at the rate of 12% per annum for the period between 08.07.2002 and 08.07.2004 (there is an apparent mistake in the computation of the amount of interest, as the correct amount of interest @ 12% per annum on the compensation amount of Rs. 3,68,340/- for a period of two years from 08.07.2002 to 08.07.2004 would be Rs. 88,400/- only and not Rs. 1,76,800/- as assessed by the Commissioner in the impugned Award).

5. Mr. D.S. Patni, the learned counsel for the appellant Insurance Company submitted that the Commissioner for Workmen Compensation has erred in holding that the death of Laxman Singh Bhandari was during the course of his employment. The learned counsel for the appellant, placing reliance on the dictum of the Apex Court in the case of **Jyothi Ademma Vs. Plant Engineer, Nellore & another** reported in **2006(5) Supreme 327**, contended that as the deceased died on account of heart attract, suffered by him while

boarding a bus at Bus Station Pithoragarh which is situated at a distance of about 120 Kms. from his work place Chirdila, the claimant has miserably failed in establishing that the death of deceased Laxman Singh Bhandari was during the course of his employment as a dumper driver with the second respondent.

6. Mr. Gopal Narain, the learned counsel for respondent No. 1 claimant Smt. Neema Bhandari, on the other hand, supported the Award and submitted that the Commissioner has rightly held that the death of Laxman Singh Bhandari was during the course of his employment.

7. Deceased Laxman Singh Bhandari was in the employment of second respondent as a dumper driver. He suffered heart attack on 08.07.2002 while boarding a bus at Bus Station Pithoragarh. There is not even an iota of evidence to establish that deceased Laxman Singh Bhandari suffered heart attack on account of any stress or strain of his employment.

8. True, Workmen's Compensation Act, 1923 is a beneficial legislation and as such, ambiguity, if any, in the provisions of the Act has to be resolved in such a manner that the same advances the object sought to be achieved by enacting this Act. Now, we will examine the provisions of Section 3 of the Act with a view to ascertain as to whether the claimant is entitled to get compensation under the provisions of the Act for the death of her husband Laxman Singh Bhandari. Section 3 of the Workmen's Compensation Act, 1923 reads as follows:

“3. Employer's liability for compensation.-

(1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter:

Provided that the employer shall not be so liable –

- (a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding three days;
- (b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to-
 - (i) the workman having been at the time thereof under the influence of drink or drugs, or
 - (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen, or
 - (iii) the wilful removal or disregard by the workman of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of workman.

(2) If a workman employed in any employment specified in Part A of Schedule III contracts any disease specified therein as an occupational disease peculiar to the employment, or if a workman, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months (which period shall not include a period of service under any other employer in the same kind of employment) in any employment specified in Part B of Schedule III, contracts any disease specified therein as an occupational disease peculiar to that employment, or if a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule III for such continuous period as the Central Government may specify in respect of each such employment, contracts any disease specified therein as an occupational disease peculiar to that employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section and, unless the contrary is provided, the accident shall be deemed to have arisen out of, and in the course of, the employment :

Provided that if it is proved,-

- (a) that a workman whilst in the service of one or more employers in any employment specified in Part C of Schedule II has contracted a disease specified therein as an occupational disease peculiar to that employment during a continuous period which is less than the period specified under this sub-section for that employment; and

(b) that the disease has arisen out of and in the course of the employment, the contracting of such disease shall be deemed to be an injury by accident within the meaning of this section:

Provided further that if it is proved that a workman who having served under any employer in any employment specified in Part B of Schedule III or who having served under one or more employers in any employment specified in Part C of that Schedule, for a continuous period specified under this sub-section for that employment and he has after the cessation of such service contracted any disease specified in the said Part B or the said Part C, as the case may be, as an occupational disease peculiar to the employment and that such disease arose out of the employment, the contracting of the disease shall be deemed to be an injury by accident within the meaning of this section.

(2A) If a workman employed in any employment specified in Part C of Schedule III contracts any occupational disease peculiar to that employment, the contracting whereof is deemed to be an injury by accident within the meaning of this section, and such employment was under more than one employer, all such employers shall be liable for the payment of the compensation in such proportion as the Commissioner may, in the circumstances, deem just.

(3) The Central Government or the State Government, after giving, by notification in the Official Gazette, not less than three months, notice of its intention so to do, may, by a like notification, add any description of employment to the employments specified in Schedule III and shall specify in the case of employments so added the diseases which shall be deemed for the purposes of employments respectively, and thereupon the provisions of sub-section (2) shall apply in the case of a notification by the Central Government, within the territories to which this Act extends, or, in case of a notification by the State Government, within the State as if such diseases had been declared by this Act to be occupational diseases peculiar to those employments.

(4) Save as provided by sub-sections (2), (2A) and (3), no compensation shall be payable to a workman in respect of any disease unless the disease is directly attributable to a specific injury by accident arising out of and in the course of his employment.

(5) Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the

employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury-

- (a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or
- (b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.”

9. The Apex Court, in the case of **Jyothi Ademma Vs. Plant Engineer, Nellore & another** reported in **2006(5) Supreme 327**, while considering the entitlement of the claimant to get compensation under the Workmen Compensation Act, 1923 in a case where the workman died on account of the heart attack suffered by him at his work place, observed in paras 6 to 8:

“6. Under Section 3(1) it has to be established that there was some casual connection between the death of the workman and his employment. If the workman dies a natural result of the disease which he was suffering or while suffering from a particular disease he dies of that disease as a result of wear and tear, of the employment no liability would be fixed upon the employer. But if the employment is a contributory cause or has accelerated the death, or if the death was due not only to the disease but also the disease coupled with the employment, then it can be said that the death arose out of the employment and the employer would be liable.

7. The expression “accident” means an untoward mishap which is not expected or designed. “Injury” means physiological injury. In *Fenton vs. Thorley & Co. Ltd.* (1903) AC 448, it was observed that the expression “accident” is used in the popular and ordinary sense of the word as denoting an unlooked for mishap or an untoward event which is not expected or designed. The above view of Lord Macnaghten was qualified by the speech of Lord Haldane A.C. in *Trim Joint District, School Board of Management v. Kelly* (1914) A.C. 676 as follows:

“I think that the context shows that in using the word “designed” Lord Macnaghten was referring to designed by the sufferer”.

8. In the present case it has been brought on record that the deceased was suffering from chest disease

and was previously being treated for such disease. The High Court also noted that the job of the deceased was only to switch on or off and, therefore, the doctor had clearly opined that there was no scope for any stress or strain in his duties. In view of the factual findings recorded the High Court's judgment does not suffer from any infirmity."

10. Reverting to the present case, there is no evidence that Laxman Singh Bhandari suffered heart attack on account of any stress or strain of his employment. The bus station at Pithoragarh, where Laxman Singh Bhandari suffered heart attack while boarding the bus, is situated at a distance of about 120 Kms. from his work place Chirdila. On these facts and in view of the above-quoted dictum of the Apex Court, it cannot be held that Laxman Singh Bhandari died during the course of his employment. The claimant, therefore, is not entitled to get any compensation under the Workmen's Compensation Act, 1923.

11. For the foregoing reasons, the appeal filed by the appellant Insurance Company under Section 30 of the Workmen's Compensation Act is allowed and the impugned Award dated 08.10.2004 passed in Case No. WCA 63 of 2002 is hereby set aside.

12. While admitting the appeal for hearing vide order dated 07.12.2004, respondent No. 1 was permitted to withdraw 50 % of the amount deposited by the appellant Insurance Company. The balance amount of 50 % is still lying with the Commissioner for Workmen Compensation. The appellant Insurance Company shall be entitled to withdraw the said amount. So far as the balance 50% of the amount, which was permitted to be withdrawn by the claimant and has been withdrawn is concerned, we leave it open to the appellant Insurance Company to either write off or recover the same from the claimant.

13. No order as to costs.

(J.C.S. Rawat, J.)
31.07.2006

(Rajeev Gupta C.J.)
31.07.2006